IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-4-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.5068 of 2006
W.P.M.P.Nos.5463, 5464 of 2006

A. Karunanidhi ... Petitioner

Vs.

The Government of Tamil Nadu,
rep.by its Secretary,
Public Works Department,
Fort St.George,
Chennai - 600 009. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of certiorarified mandamus calling for the records relating to the proceedings of the respondent in G.O.(MS)No.276, Public Works (A1) Department, dated 17.11.2005 and quash the same and consequently direct the respondent to revise the panel prepared for the year 1997-1998 for inclusion of the petitioner in the appropriate place i.e., between S.Rajendran and S.Chandrasekaran in the panel prepared for the year **1997-1998***.

For Petitioner : Mr.G. Saravanakumar

For Respondents : Mrs.D.Malarvizhi,
Government Advocate

O R D E R

Prayer in the writ petition is to quash the G.O.(MS)No.276, dated 17.11.2005 and direct the respondent to revise the panel prepared for the year 1997-1998 for inclusion of petitioner's name in the appropriate place i.e., between S.Rajendran and S.Chandrasekaran in the panel prepared for the year **1997-1998***.

2. Petitioner entered into the service of Public Works Department after selection by the Public Service Commission as Assistant Engineer in the year 1980. He was proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, based on a charge, which was subsequently dropped. However, due to the issuance of charge memo under Rule 17(b), petitioner was not given promotion to the post of Assistant

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Executive Engineer by the Promotion Committee during the year 1997. The reason given for non-consideration of petitioner's name for inclusion in the panel was due to the pendency of the disciplinary proceeding. According to the petitioner, even after dropping all the said charges, petitioner's name was not included in the panel prepared for the year 2003-2004 for promotion to the post of Assistant Executive Engineer and the stand taken was that petitioner's name would be considered during the year 2004-2005. Petitioner challenged the said order issued in letter No.170177/A1/2004-1, dated 25.4.2004 in W.P.No.28466 of 2004 and this Court passed the following order,

> "However, if the grievance of the petitioner is on the ground that the petitioner after paying the instalments and the punishment was in existence, he has been denied promotion on by the order dated 28.05.2004, wherein the petitioner has been informed that his promotion will be considered in the panel for the period of 2003-2004 is drawn, as the petitioner has completed the payment in instalments on 27.03.2004 and in view of the said specific stand of the respondents,it is made clear that the name of the petitioner will be considered without reference to the impugned order for including his name in the ensuing promotion list.
>
> 2. With the above observation, the writ petition is disposed of. No costs. Consequently, connected W.P.M.Ps 34575 and 34576 of 2004 is closed."

The case of the petitioner is, in spite of the said order, petitioner's name was not included in the panel and therefore petitioner submitted representation for inclusion of his name in the list for the year 2003-2004, but the respondent without adhering to the rules or following the order of this Court, issued G.O.(Ms)No.276 P&AR Department dated 17.11.2005 and published the panel, in which also petitioner's name is not included and therefore the petitioner filed the present writ petition.

3. The grievance of the petitioner is that the charge framed against him under rule 17(b) was dropped in the year 1999 by G.O.Ms.No.172 PWD (E2) dated 4.5.1999 and therefore deferring of his name in the year 1997-1998 due to the pendency of the charge is bound to be reconsidered. It is further stated in the affidavit that the said action of the petitioner in not including petitioner's name for the year 1997-1998, even after dropping of the charge is in violation of G.O.Ms.No.368 P&AR Department, dated 18.10.1993, in which it is stated that if the officer is exonerated or acquitted of the charges levelled against him, the name of such officer is to be included in the panel.

4. According to the petitioner, the other reason given by the respondent is that recovery proceeding was pending under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. But the

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pendency of such charge cannot be held against the petitioner even according to the Government Rules and therefore the petitioner's name is entitled to be included in the panel for 1997-1998 in the proper place between S.Rajendran and S.Chandrasekaran, in the panel prepared for the year **1997-1998***

5. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate.

6. Admittedly the charge levelled against the petitioner under Rule 17(b) was dropped through G.O.Ms.No.172 PWD(E2) Department, dated 4.5.1999 and a copy of the said order is filed in the additional typed set of papers. The recovery proceeding initiated against the petitioner is only under rule 17(a) and the same is also established before this court as mentioned in the petitioner's representation dated 4.4.2004 submitted to the first respondent. It is a settled law that pendency of proceeding under Rule 17(a) is not a bar for considering the name of an employee for promotion.

7. This Court in W.P.No.32007 of 2005, by order dated 7.3.2006 (K.Thirunavukkarasu v. State of tamil Nadu and another), following a Division Bench decision of this Court in W.P.No.11511 of 2002 (K.Selvarajan v. The Secretary to Government, Department of Health & Family Welfare, Government of Tamil Nadu, Chennai-9 and two others), took a view that once 17(b) charges are dropped against an employee and the other charge being only under Rule 17(a), the name of the employee is entitled to be included in the panel for promotion. The writ petition was allowed with consequential directions holding that once the charges are dropped, it is automatic that the person's name should be considered for inclusion if there is no other legal impediment.

8. At this juncture I feel it relevant to refer the following two decisions of the Supreme Court.

(a) In Delhi Jal Board v. Mahinder Singh reported in (2000) 7 SCC 210, in paragraph 5, it is held as under,

> "... The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give

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benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench."

(b) In C.O.Arumugam and others v. the State of Tamil Nadu and others reported in 1990 (1) SLJ 185, in pararagraph 5 the Honourable Supreme Court held thus,

" As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn it is a guarantee flowing from Article 14 and 16 (1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

9. Applying the above propositions laid down by the Honourable Supreme Court and Division Bench of this Court, which was followed by me in the order dated 7.3.2005 in W.P.No.32007 of 2005, the present writ petition is allowed. The respondents are directed to include the petitioner's name in the panel for the post of Assistant Executive Engineer for the year 1997-1998 and place petitioner's seniority in between S.Rajendran and S.Chandrasekaran in the panel prepared for the year 2004-2005, if the petitioner is otherwise qualified in accordance with the rules. The respondent shall consider the claim of the petitioner on the basis of the above direction within a period of four weeks from the date of receipt of copy of this order and if petitioner's claim is sustained, he shall be given notional promotion from the date when his junior S.Chandrasekaran was given promotion with all consequential benefits.

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The writ petition is allowed with the above directions. No costs. Connected WPMPs are closed.

Sd/-Asst. Registrar,
Dt/-19.4.2006.

*Amended as per the order of this Court dated 3.4.2007 and made in WPMP.892/2007.
Sd/-Asst. Registrar,
Dt/-11.4.2007.

/true copy/

Sub Asst. Registrar.

vr

To
The Secretary, Public Works Department,]
Fort St.George, Chennai - 600 009.]To be substituted to the
+ 1 CC To Mr. G.Saravanakumar, Advocate]Order already despatched
SR NO.20976]on 24.4.2006.

W.P.No.5068 of 2006

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Gp/12.4

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